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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Applications of ) MM Docket No. 93-88/  
EZ COMMUNICATIONS, INC. ) File No. BRH-910401C2  
For Renewal of License of FM )  
Radio Station WBZZ(FM) on )  
Channel 229B at )  
Pittsburgh, Pennsylvania )  
ALLEGHENY COMMUNICATIONS GROUP, ) File No. BPH-910628MC  
INC. )  
For a Construction Permit for a )  
New FM Broadcast Station on )  
Channel 229B at )  
Pittsburgh, Pennsylvania )  
To: Administrative Law Judge  
Edward Luton

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**MASS MEDIA BUREAU'S COMMENTS ON**  
**PETITION TO ENLARGE ISSUES**  
**RE RENEWAL EXPECTANCY**

1. On December 21, 1993, Allegheny Communications Group, Inc. (Allegheny) filed a petition requesting that the Presiding Judge specify issues against EZ Communications, Inc. (EZ) to determine whether EZ violated Sections 73.3588 and 73.3589 of the Commission's Rules<sup>1</sup> and, if so, the impact thereof on EZ's renewal expectancy. The Mass Media Bureau hereby opposes addition of the requested issue.

2. By Memorandum Opinion and Order (Order), FCC 93-513,

<sup>1</sup> Section 73.3588 specifies that the Commission must pass on any agreement for withdrawal of a petition to deny or an informal objection to a renewal application. Section 73.3589 requires approval of agreements whereby one party agrees to refrain from filing a petition to deny or informal objection.

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released December 6, 1993, the Commission denied a Motion for Leave to File Application for Review of the Hearing Designation Order, 8 FCC Rcd 2448 (Mass Media Bur. 1993) (HDO) filed by Allegheny. In denying Allegheny's motion, the Commission noted that, consistent with its holding in GAF Broadcasting Company, Inc., 8 FCC Rcd 5496, 5499, paras. 19-21 (1993), "allegations involving a licensee's violation of the Communications Act, Commission rules or Commission policy can be relevant in the determination of the weight to be given to a licensee's claim to a renewal expectancy. Policy Regarding Character Qualifications in Broadcast Licensing, 102 FCC 2d 1179, 1232 fn. 125 (1986)." Consequently, the Commission emphasized that, despite the HDO's finding that no basic qualifying issues were warranted under the facts relied on by Allegheny, "the ALJ has discretion to add issues, based on a prima facie showing by Allegheny that EZ had violated the Communications Act, or the Commission's rules or policy, for consideration in conjunction with the renewal expectancy determination."

3. In its motion, Allegheny claims that the Commission's Order, holding that the HDO ruling was not dispositive as to the effect of its requested issues on renewal expectancy, warrants addition of the requested issues. The Bureau disagrees. The Commission's Order did not establish new precedent in the area of renewal expectancy. All the Commission did in its Order was note that under its prior holding in the GAF case, the Presiding Judge

has the discretion to consider the matters raised by Allegheny, if Allegheny makes the requisite prima facie showing.

4. Section 73.3588 of the Commission's Rules deals with the dismissal of petitions to deny or withdrawal of informal objections. It is clear that in order for there to be a violation of Section 73.3588 there must have been pending either a petition to deny or an informal objection to the renewal of a license. In the instant case, the Randolph letter complaining about WBZZ's treatment of her is dated April 27, 1989. (Allegheny Exhibit 11, pp. 2-4, rejected, Tr. 132). By letter dated June 15, 1989, the Chief, EEO Branch, informed Randolph, inter alia,

If it is your intention to file a petition to deny an application for renewal of a broadcast license or an informal objection, Section 73.3584 of the Commission's Rules specifies that to be timely, a petition to deny must be filed by the last day for filing a mutually exclusive application.

(Allegheny Exhibit 11, pp. 5 and 6, rejected, Tr. 132). The letter then went on to describe what such a petition or informal objection should contain and when it should be filed. It is apparent that Randolph's letter, which was sent when EZ did not have an application for renewal of WBZZ (FM)'s license pending, was not, and was not so considered by the staff to be, either a petition to deny or an informal objection. Consequently, Allegheny has failed to make a prima facie showing that EZ violated Section 73.3588 of the Commission's Rules.

5. Allegheny has also failed to make a prima facie showing

that EZ violated Section 73.3589 of the Commission's Rules. In order for there to have been a violation of Section 73.3589 there must have been a failure to file a copy of the agreement where there was a payment in exchange for the withdrawal of a threat to file either a petition to deny or an informal objection or a payment for the purpose of inducing a person or entity to refrain from filing such a petition or informal objection. In declining to specify a Section 73.3589 issue against EZ, the HDO noted there was no evidence that Randolph threatened to file a petition to deny or informal objection. 8 FCC Rcd 2448 at 2450 (Mass Media Bur. 1993). Moreover, as the HDO noted there is no evidence that the payment was made for the purpose of causing Randolph to refrain from filing a petition to deny or informal objection. Rather, the evidence is that the payment was made as part of an omnibus settlement of a civil suit, ending many years of potential litigation, to which Randolph's agreement not to pursue her complaint or voluntarily cause EZ a problem with the FCC was a collateral matter. This agreement was approved by a judge of the Pennsylvania court who subsequently ordered the record sealed. HDO, at fn. 3. Absent a showing that EZ's agreement with Randolph was for either of the purposes set forth in Section 73.3589, Allegheny has failed to make the requisite prima facie showing that the failure of EZ to file a copy of the agreement with the FCC was a violation of the Rule.<sup>2</sup>

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<sup>2</sup> Allegheny claims that the fact that the settlement occurred just a few weeks before the filing of petitions to deny or complaints against the WBZZ pending renewal application were due

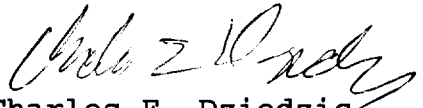
5. Allegheny further claims that a principal if not primary purpose of the settlement was to obviate the impact of the jury verdict on EZ's renewal application. In this regard, Allegheny notes that settlement only occurred after the Commission had released its public notice, dated May 9, 1991, of the adoption of Character IV (See Attachment C to Allegheny's Petition) which created uncertainty as to how the Commission would view the defamation adjudication. Allegheny complains that by entering into a settlement agreement, under these circumstances, EZ abused the Commission's processes. This argument, however, has already been disposed of by the HDO which found, on identical facts, that an abuse of process issue was not warranted. Consequently, although not specifically requested by Allegheny, there is no basis for specification of an abuse of process issue against EZ.

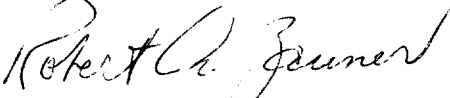
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raises a question as to whether EZ has violated Sections 73.3588 and 73.3589 because a copy of the agreement was never filed with the Commission. In the Bureau's opinion, the timing alone does not establish a prima facie showing that Randolph received a payment for either of the purposes set forth in Section 73.3589.

6. In sum, the Bureau submits that Allegheny has failed to make a prima facie showing which would warrant enlargement of the issues for consideration under renewal expectancy.

Respectfully submitted,  
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January 5, 1994

**CERTIFICATE OF SERVICE**

Michelle C. Mebane, a secretary in the Hearing Branch, Mass Media Bureau certifies that she has on this 5th day of January 1994, sent by regular United States mail, U.S. Government frank copies of the foregoing **"Mass Media Bureau's Comments on Petition to Enlarge Issues Re Renewal Expectancy"** to:

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